

STANDARD AGREEMENT

STD. 213 (NEW 06/03)

**ATTACHMENT 6
Sample Standard Agreement**

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the Energy Commission Agency and the Contractor named below

ENERGY COMMISSION AGENCY'S NAME

Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is: December 30, 2009 to March 31, 2012. The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: \$

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Pages
Exhibit B – Budget Detail and Payment Provisions	Pages
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)	Pages
Exhibit E – ARRA Federal Provisions	Pages
Attachments 1-5, Federal Language	
Exhibit F – Contacts	Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR*California Department of General
Services Use Only*

CONTRACTOR'S NAME (If other than an individual, Energy Commission whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

ENERGY COMMISSION OF CALIFORNIA

AGENCY NAME

Energy Resources Conservation and Development Commission (Energy Commission)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

☐ Exempt per:

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EXHIBIT B

Budget Detail and Payment Provisions

1. ALLOWABLE COSTS

- A. Allowable costs shall be determined in accordance with the provisions incorporated by reference in Exhibit E of this Agreement.
- B. The Contractor recognizes that Title 10 of Code of Federal Regulations (CFR) Section 420.18 places limitations on the use of funds available under this Agreement, and the Contractor shall comply with these limitations. The parties recognize and acknowledge that the funds available under this Agreement may be used for the purchase and installation of equipment and materials for energy efficient measures and renewable energy measures, including reasonable design costs, in accordance with 10 CFR Section 420.18(e). The parties further recognize and acknowledge that the 50 percent funding limitations of 10 CFR Section 420.18(e)(2) do not apply to the use of American Recovery and Reinvestment Act of 2009 (ARRA) funds under this Agreement. (Refer to Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.)

2. INVOICING PROCEDURES

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. The Contractor can only bill for actual expenses incurred for hours worked at the Contractor's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B.
- B. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

I certify that this invoice is correct and proper for payment, and that reimbursement for these costs has not exceeded 20% of administrative costs, including office supplies, library materials, and other equipment, is otherwise in compliance with 10 Code of Federal Regulations (CFR) Section 420.18, and will not be received through any other procurement method or from any other sources, including but not limited to a Government Entity contract or subcontract.

Send invoices to:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814

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C. Payment Request Format

The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Contractor sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission upon request. In accordance with 10 CFR Part 600: DOE Financial Assistance Regulations, the Contractor's accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Contractor shall retain records for three (3) years from the day the Contractor submits its final expenditure report.

The Contractor shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all subcontractor services and expenses invoiced for payment under this Agreement.

D. A request for payment shall reference the Agreement number and shall consist of, but not be limited to the following:

- 1) Agreement number, date prepared, and billing period.
- 2) The Contractor's actual unloaded hourly labor rates by individual.
- 3) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 4) Subcontractor expenditures.
- 5) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
- 6) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts.
- 7) Leverage fund expenditures, if applicable; and
- 8) By task or category (as specified in Budget Detail): cumulative amounts, budgeted per agreement, billed to date, current billing, and balance of funds.

E. All invoices must be accompanied by the following material to support the expenditure:

- 1) Subcontractor or invoices.
- 2) Receipts for travel, including departure and return times.
- 3) Receipts for materials, miscellaneous, and/or equipment.
- 4) A report that documents the progress of the work during the billing period; and

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- 5) Any other deliverables due during the billing period.

3. **BUDGET CONTINGENCY CLAUSE**

- A. It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement, and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: (1) cancel this Agreement with no liability occurring to the Energy Commission; or (2) offer an Agreement Amendment to the Contractor to reflect the reduced amount.

- B. It is mutually agreed that funding for this Agreement is dependent upon a federal agreement (DE-EE0000221) that has a scheduled budget period end date of April 30, 2012, and is subject to the following provisions:
- 1) This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement.
 - 2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement.
 - 3) If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

4. **TRAVEL AND PER DIEM RATES**

The Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at: http://energynet/Admin/fsb/Accounting/Travel%20Summary_1-09.pdf.

Travel identified in Exhibit B, Pre-Approved Travel List, is approved and does not require further authorization.

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- A. Travel that is not included in Exhibit B, Pre-Approved Travel List shall require written authorization from the Contract Manager prior to travel departure. The Energy Commission will reimburse travel expenses from the Contractor's office location.
- B. The Contractor must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

5. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices, pursuant to California Public Contract Code Section 10346. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Exhibit B, Budget identifies the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks.

6. **PAYMENT TERMS AND CONDITIONS**

Check all that apply:

- ☐ Monthly
- ☐ Quarterly
- ☐ Itemized
- ☐ Flat Rate
- ☐ In Arrears
- ☐ Advance Payment to Public Prime Contractor Not to Exceed \$ _ or ____ % of the Agreement Amount
- ☐ Advance Payment to Private Prime Contractor for Public subcontractors, (PRC section 25620.3(d)) Not to Exceed \$ _____ or ____ % of the Subcontract Amount

- A. Payment shall only be made in accordance with this Exhibit B.
- B. The Contractor is not allowed to profit from its subcontractors' costs. Subcontractors are not allowed to profit from their subcontractors' costs
- C. Each request for payment is subject to the Contract Manager's approval.

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- D. The Contractor shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- E. Each invoice is subject to approval by the Energy Commission's Contract Manager. The Contract Manager will not process any payment request that does not meet the following conditions:
 - 1) All required deliverables and reports have been submitted and are in accordance with the Standard of Performance clause in Exhibit D.
 - 2) All appropriate permits or permit waivers from governmental agencies have been issued.
- F. Payments will be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. The Contractor will be notified via a Dispute Notification Form, within fifteen (15) working days of receipt of an invoice, if the Energy Commission disputes the submitted invoice. On any disputed invoice, the Energy Commission shall withhold payment only on the disputed portion of the invoice.
- G. In accordance with 31 United States Code (U.S.C.) Sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, the Contractor will minimize the time elapsing between the drawdown of funds from the Energy Commission and the disbursement of funds. The Contractor will request reimbursement to occur as close as possible to the disbursement.

The Contractor agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement. The Contractor also agrees that it will provide written notification to each of its subcontractors, if any, of the CMIA and the need for each subcontractor to comply with all applicable CMIA provisions and regulations.

- H. The Energy Commission must receive the final invoice no later than thirty (30) calendar days after the Agreement termination date.
- I. Payment will be made in accordance with the Prompt Payment Act, California Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within forty-five (45) days of receipt or automatic payment of late payment penalties.
- J. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, or parts to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any excise taxes levied on employees' wages.

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- K. No payment will be made for costs identified in the Contractor's invoices that have or will be reimbursed by any other source, including but not limited to a government entity contract or subcontract or other procurement agreement.

7. **COSTS: CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTORS**

This paragraph contains provisions for cost changes without a formal amendment. Exhibit D contains the rules for changing or adding personnel and subcontractors listed in the Agreement. When a Contractor makes personnel and subcontractor changes in accordance with Exhibit D that do not require a formal amendment, the following rules explain the costs for which the Contractor can invoice. Changes outside these rules require a formal amendment to the Agreement.

A. Labor Rates

The Agreement budget identifies individuals and/or job classifications and the maximum rate that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed.

1a) Contractor Changes: Addition or Replacement of Personnel

If the Contractor adds a new person to a job classification listed in the Agreement's budget or replaces a person listed in the Agreement's budget, the Contractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the budget.

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor's budget. The Contractor cannot use for its personnel a job classification or rate of a subcontractor. The new person must be invoiced within job classifications that already exist in the Agreement for the Contractor.

1b) Subcontractor Changes: Addition or Replacement of Personnel

If a subcontractor adds a new person to a job classification listed in the Agreement's budget or replaces a person listed in the Agreement's budget for that subcontractor, the subcontractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the budget.

Additions or replacement of personnel can only be made within existing job classifications identified in the subcontractor's budget. The subcontractor cannot use for its personnel a job classification or rate of another subcontractor or of the Contractor. The new person must be invoiced within job classifications that already exist in the Agreement for the subcontractor.

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2) Shift to Higher-Paying Job Classifications/Employee Promotions

Contractor and subcontractor personnel listed in the Agreement's budget can be moved to a higher-paying job classification listed in the Agreement with prior written approval of the Commission Contract Manager and the appropriate Deputy Director.

3) No New Job Classifications

The Contractor may not add new job classifications to the Agreement. If the Contractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

B. Other Costs

- 1) If the Contractor replaces a subcontractor (with prior written approval from the Energy Commission Contract Manager), the new subcontractor may charge actual rates up to, but not in excess of, the same direct and indirect costs as included in the budget for the replaced subcontractor, and no new types of costs are allowed to be charged by the new subcontractor.
- 2) If a new subcontractor is added to the Agreement, pursuant to the procedures in Exhibit D, the Contractor can charge direct and indirect costs as approved by the Energy Commission in the "Subcontractor Add" form. See Exhibit D for information about the procedure for adding subcontractors.

8. BUDGET REALLOCATION

- A. The Energy Commission, through its Contract Manager and Contract Officer, and the Contractor can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- 1) For agreements without work authorizations, the total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to the Contractor under this Agreement. It does not include any match funds provided by the Contractor.

For example, if under an agreement the Energy Commission agrees to pay a contractor \$100,000 and the contractor is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a contractor \$800,000, ten percent (10%) would be \$80,000, but the cap is

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\$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

- 2) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
 - Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
 - 3) The budget reallocation only involves moving funds between tasks, line items, or categories. The total Agreement amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
 - 4) The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, Profit, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as twenty-five percent (25%) of Direct Labor, the twenty-five percent (25%) cannot be changed without a formal amendment. Another example is that if a contractor listed that its profit rate is eight percent (8%) of the total agreement, to increase this rate would require a formal amendment.
- B. To effectuate a budget reallocation under this section, the Contractor must make a request in writing to both the Contract Manager and the Contract Officer. Both the Contract Manager and Contract Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Contract Manager and the Contract Officer. Oral communications cannot be used or relied upon. If the request is approved, the Contract Manager shall revise the Budget Attachments to reflect the changes and send them to the Contract Officer and the Contractor.
- C. Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a "formal amendment" means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties, and approval by the California Department of General Services.
- D. Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

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9. BUDGET DETAIL

See Attached. [*Attach Detail*]

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

PLEASE NOTE: This page will not be included with the final Agreement. The General Terms and Conditions will be included in the Agreement by reference to the Internet site: http://www.ols.dgs.ca.gov/Standard_Language/default.htm. Choose “**General Terms and Conditions for all Contracts Except Interagency Agreements**” (GTC-610) or if this Agreement is with another State agency, choose “**General Terms and Conditions for Interagency Agreements**” (GIA-610). The exact terms to be used will be those appearing on the website the date the Agreement is signed by the Contractor.

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EXHIBIT D

Special Terms and Conditions

1. CONTRACT MANAGEMENT

- A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change its Contract Manager at any time by giving written notice to the Contractor. The Energy Commission's Contract Officer will sign the written notice.
- C. Energy Commission staff may work side by side with the Contractor's staff, to the extent and under conditions that may be directed by the Energy Commission's Contract Manager. In this connection, the Energy Commission staff will be given access to all data, working papers, etc., that the Contractor may seek to utilize.
- D. The Contractor will not be permitted to utilize Energy Commission personnel for the performance of services that are the Contractor's responsibility, unless the Energy Commission's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.

2. STANDARD OF PERFORMANCE

The Contractor shall be responsible in the performance of it and its subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard, the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies that the Energy Commission may have under law.

- A. The Contractor/ subcontractor will reperform, at its own expense, any task that was not performed to the reasonable satisfaction of the Contract Manager. Any work reperformed pursuant to this section shall be completed within the time limitations originally set forth for the specific task involved. The Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.

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- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this section in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task, the Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. **SUBCONTRACTS**

The Contractor shall enter into agreements with the following firms and/or individuals, and shall manage their performance.

OR

No subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and the Contractor shall manage their performance.

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Energy Commission for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Energy Commission's obligation to make payments to the Contractor. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. The Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. The Contractor shall be responsible for: (1) scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; (2) coordinating subcontractor accessibility to Energy Commission staff; and (3) submitting completed products to the Contract Manager.

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C. Required Subcontract Provisions

All subcontracts shall contain the following:

- 1) The provisions of Exhibit E, including attachments.
- 2) The "Recordkeeping and Inspection of Records" section of this Exhibit (Section 5).
- 3) A provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Contract Manager.
- 4) The confidentiality provisions in the "Reports" section of this Exhibit (Section 7).
- 5) The audit rights, indemnification, and non-discrimination provisions stated in the General Terms and Conditions (Exhibit C);
- 6) Provisions recognizing the applicability of the funding limitations of 10 CFR Section 420.18, as modified by Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.

D. Assignment of Subcontracts

The Contractor shall not allow any subcontractors to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractors without first obtaining the written consent of the Contract Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subcontractors" subsection of this section.

E. Bureau of State Audits

All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

F. Notification of Subcontract Termination

Upon the termination of any subcontract, the Contractor shall notify the Contract Manager and Contract Officer immediately in writing.

G. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

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If the Energy Commission or Contractor requires the replacement or substitution of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Contractor or a subcontractor).
- 2) If there is no available person listed in this Agreement who can perform the work, then the Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, the Contractor may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person added is an employee of the Contractor or an existing subcontractor, the Contractor shall provide the added employee's pay rate, classification and resume to the Contract Manager, and the Contract Manager may approve the new person and rate. The Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.
- 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the "Disabled Veteran Business Enterprise (DVBE) Requirements" section below for changes to DVBEs.
- 5) If the person added is a new subcontractor, the Contractor shall use the process outlined below.

H. Process for Additions, Removal or Substitutions of Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a subcontractor, the subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of subcontractors including without limitation: California Contracts Register; the Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.

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- 2) The Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subcontractors.
- 3) When a subcontractor is proposed to be added, under either a competitive or non-competitive process, the Contract Manager shall complete and submit to the Contracts Officer a "Subcontractor Add" form. This form identifies the new subcontractor, resumes, what bidding method was used to obtain the subcontractor (competitive or non-competitive), and rates. The proposed subcontract can be executed only after the Contract Officer approves the "Subcontractor Add" form.

I. Separation of Duties from Monitoring, Verification, and Evaluation Contractor

The Energy Commission has retained KEMA Inc. to serve as the monitoring, verification, and evaluation (MV&E) contractor for all of the Energy Commission's ARRA-funded projects, including projects funded through contracts, grants, or loans under the State Energy Program, the Energy Efficiency and Conservation Block Grant Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Planning Program. In order to achieve the Energy Commission's policy requiring separation of duties between the MV&E contractor and any projects that it evaluates, the Contractor is prohibited from including KEMA Inc. or its subsidiary known as KEMA Services Inc. as a participant in this project, where KEMA Inc. or KEMA Services Inc. are paid either from funds of this Agreement as a subcontractor or from other funds the Contractor has included as cost share to achieve the objectives of this Agreement.

4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**

A. Reporting

If the Contractor made a commitment to achieve DVBE participation for this Agreement, the Contractor must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Contract Officer: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

B. Substitution of DVBE

The Contractor shall use each DVBE identified in its proposal or listed in this Agreement. The Contractor understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is

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based in part on its commitment to use the DVBE subcontractor(s). If the Contractor believes an identified DVBE must be replaced or substituted, the Contractor shall inform the Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. The Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.

5. **RECORDKEEPING AND INSPECTION OF RECORDS**

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal government upon request. In accordance with 10 CFR Part 600, the Contractor's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Contractor agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify all subcontractor services and expenses invoiced for payment under this Agreement.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The

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Contractor shall include this provision in all of its agreements with its subcontractors from whom it acquires goods or services in its execution of ARRA-funded work.

6. **PERFORMANCE EVALUATION**

Consistent with California Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending its performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

7. **REPORTS**

A. **Federal Reporting Requirements:** The Contractor shall submit progress reports to the Energy Commission in accordance with Exhibits A and E.

B. **Additional Reporting Requirements:**

- 1) **Progress and Final Reports:** The Contractor shall prepare progress reports summarizing all activities conducted by the Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- 2) **Title:** The Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Contractor Number
By (Contractor)
- 3) **Ownership:** Each report shall become the property of the Energy Commission.
- 4) **Non-disclosure:** The Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize the Contractor to further disclose and disseminate the information on any

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other occasion. The Contractor will not comment publicly to the press or any other media regarding its report, or the Commission's actions on the same, except to Commission staff, the Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of the Contractor or the content of any preliminary or final report, the Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

- 5) **Confidentiality:** Neither the Contractor, its employees, or any tier of subcontractors may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the Contract Manager, the Contractor, the Contractor's employees, and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- 6) **Disclosure:** Ninety (90) days after any document submitted by the Contractor is deemed by the Contract Manager to be a part of the public records of the State, the Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:

"This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221."

Disclaimer. "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of

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authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

8. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.
- C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 CFR Part 600.
- D. All equipment purchased with Energy Commission funds shall be subject to the following terms and conditions:
 - 1) Title to all non-expendable equipment purchased in part or in whole with Commission funds shall remain with the Energy Commission.
 - 2) The Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the Contractor's possession or subject to its control. The Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.
- E. Upon termination or completion of this Agreement, the Energy Commission's Executive Director may:
 - 1) Authorize the continued use of such equipment.
 - 2) By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.
 - 3) Request delivery of the equipment to the Energy Commission, with any costs incurred for such return to be borne by the Energy Commission.

9. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

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- A. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.
- B. The Contractor shall obtain the same rights for the Energy Commission and DOE from all subcontractors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission and DOE from the subcontractor.
- C. Rights to DOE
 - 1) The Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.
 - 2) The Contractor acknowledges and agrees that DOE has the right to:
 - (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
 - (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- D. Rights to Energy Commission
 - 1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.
 - 2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California for governmental purposes any subject invention(s) first produced in the performance of this Agreement.
 - 3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement.

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- E. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- F. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- G. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement, and which the Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- H. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- I. As to "generated data" which is reserved to the Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at the Contractor's own expense for a period of not less than three (3) years after receipt by the Energy Commission of the Final Report herein.
- J. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the Contractor shall notify the Energy Commission of any

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contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. The Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. The Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

10. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of this Agreement, the Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse the Contractor for compensation and travel of the personnel at the Agreement rates for the testimony that the Energy Commission requests.

11. **DISPUTES**

In the event of a Contract dispute or grievance between the Contractor and the Energy Commission, both parties shall follow the following procedure. The Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position, and the remedy sought. The Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer's decision, the Contractor may appeal to the Executive Director.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy

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Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. The Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

B. Binding Arbitration by Mutual Agreement

Should the Energy Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration.

The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules.

If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;

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- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of funds from this Agreement. Both parties must agree, in writing, to utilize funds from this Agreement to pay for arbitration costs.

12. **TERMINATION**

The parties agree that because the Energy Commission is a state entity, it must be able to immediately terminate the Agreement upon the default of Contractors, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Contractor specifically acknowledges that the Energy Commission's unilateral termination of the Agreement under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. The Contractor further agrees that upon any of the events triggering the unilateral termination of the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay the Contractor only the reasonable value of the services rendered by the Contractor prior to termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement;
- 2) Inability of the Contractor to pay its debts as they become due and/or the Contractor's default of an obligation that impacts its ability to perform under this Agreement;
- 3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Contractor or any agent or representative of the Contractor offered or gave gratuities to any officer or employee of the Energy Commission, with a view toward securing an Agreement or

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securing favorable treatment with respect to awarding, amending or making a determination with respect to performance of the Agreement;

- 4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission;
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; and
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

13. **ENFORCEABILITY**

The Contractor agrees that if it or one of its subcontractors fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable Federal and State laws.

14. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

15. **CAPTIONS**

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The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

16. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

17. **NOTICE**

This section applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This section is not intended to apply to normal, daily communication between the parties related to progress of the work.

The parties to the Agreement must give legal notice using U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this section.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

18. **STOP WORK**

The Contract Officer may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, and misrepresentations.

- A. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. The Commission shall make an equitable adjustment based upon the Contractor's written request. The Contractor must make such adjustment request within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Contract Officer canceling the stop work order.

19. **INTERPRETATION OF TERMS**

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This Agreement shall be conducted in accordance with these terms and conditions. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

20. **AMENDMENTS**

A. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to California Public Contract Code Section 10335, California Government Code Section 11010.5, and the State Contract Manual. Amendments may require prior written approval from DOE.

B. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

C. Formal Amendments

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- 1) Change of the Contractor;
- 2) Changes to Exhibit A that significantly modify the Agreement's purpose;
- 3) Changes to Exhibit A that extend the due dates beyond the term of the Agreement;
- 4) Changes to Exhibit B that increase the amount of the Agreement; and
- 5) Changes to Exhibit B that increase rates or fees.

D. Informal Amendments

The Energy Commission's Contract Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Energy Commission's Contracts Officer and the Contractor.

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21. **INSURANCE REQUIREMENTS**

- A. The requirements below specify the Contractor's insurance obligations under this Agreement. Prior to the Contractor commencing performance of services and for the duration of this Agreement, the Contractor shall, at its sole cost and expense, carry and maintain employer's liability insurance, comprehensive general liability insurance, professional liability insurance and automobile liability insurance (including coverage for owned, non-owned and hired autos) on a "per claim" basis. Such insurance shall conform to the following requirements:
- 1) Workers' Compensation. Statutory Workers' Compensation covering all employees and complying with all laws of California, and Employer's Liability Insurance with minimum limit of One Million Dollars (\$1,000,000).
 - 2) Commercial General Liability. Commercial General Liability providing for a limit of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate for bodily injury or property damage combined.
 - 3) Professional Liability. Professional Liability insurance including coverage for any errors or omissions caused by negligence in the performance of duties under this Agreement, providing for a limit of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) aggregate.
 - 4) Automobile Liability. Commercial Automobile Liability insurance coverage in the sum of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles.
- B. The Contractor shall supply the Energy Commission with certificates evidencing such insurance, which shall show the Energy Commission and the State of California (and any other party identified as an Indemnified party) as additional insured parties under the comprehensive general liability insurance and automobile insurance policies with respect to the Contractor's Services and shall provide for thirty (30) days' written notice to Energy Commission prior to cancellation or modification of any certificate of insurance required under this contract. Cancellation or modification shall be consistent with the insurance requirements of this exhibit. Certificates evidencing the required insurance as stipulated shall be presented prior to any payments made pursuant to this Agreement.

22. **CONFIDENTIALITY**

- A. Information Considered Confidential

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If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission's Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 California Code of Regulations (CCR) Section 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR Sections 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

23. **CONFLICT OF INTEREST**

- A. The Contractor agrees to continuously review new and upcoming projects in which members of the Contractor's team may be involved for potential conflicts of interest. The Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Energy Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.

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- B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than ten (10) percent of the total monetary value of the consulting services contract.

24. RECOGNITION OF ARRA FUNDING

The Contractor shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Contract Manager shall provide the Contractor with instructions on how to publicly recognize ARRA funding.

25. STATE ARRA IDENTITY MARK AND LOGO

It is important for all ARRA-funded programs administered by the Energy Commission to provide consistent and clear messaging and branding for the State of California's consumers. A single identifying brand lends authority and reliability to the multiple statewide programs offered by various private and public local, regional, and state entities. The Energy Commission is implementing a statewide branding effort for this purpose. The branding effort will include development of a statewide ARRA Program Identity Mark and Logo (Identity Mark/Logo) for use in conjunction with marketing, promotional, and educational materials, and development of one or more central website portals for purposes of disseminating program information and interconnecting program participants. The Energy Commission's statewide branding effort is being developed in conjunction with the statewide branding efforts of the California Public Utilities Commission and the individual branding efforts of various program participants.

The Contractor shall participate in the Energy Commission's statewide branding effort as specified in this section.

- A. Identity Mark/Logo

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The Contractor shall use the Identity Mark/Logo on all marketing, promotional, and informational materials for programs and projects funded through this Agreement, including any printed or electronic collateral, websites, signage, or clothing.

B. Coordinating Use of Identity Mark/Logo

- 1) The Contractor shall coordinate its required use of the Identity Mark/Logo with the Energy Commission before using the Identity Mark/Logo. This coordination may include the Contractor's submission of its proposed marketing, promotional, and information materials and websites to the Energy Commission for its review to ensure the Identity Mark/Logo is being used appropriately. If the Energy Commission requires the Contractor to submit such materials and websites for its review, the Energy Commission will use its best efforts to approve all proposed uses of the Identity Mark/Logo in an expeditious manner. The Energy Commission may prohibit the Contractor from using the Identity Mark/Logo if any of the proposed uses breach the terms of this Agreement.
- 2) Upon reasonable prior written notice, the Contractor shall provide the Energy Commission unrestricted access to its websites, so the Energy Commission may review the Contractor's use of the Identity Mark/Logo.

C. Authorized Uses

- 1) The Contractor may use, reproduce, display, and publish the Identity Mark/Logo only for purposes of marketing or promoting the ARRA-funded program or project(s) funded through this Agreement. The Contractor may not use the Identity Mark/Logo for other purposes. The Contractor may not use any other Energy Commission mark or logo obtained from the Energy Commission's website, promotional materials, or any other source.
- 2) The Contractor may use, reproduce, and display the Identity Mark/Logo on its website as a link to the Energy Commission's website. The Contractor may not use the Identity Mark/Logo to link to any other website.

D. Unauthorized Uses

- 1) The Contractor may not use the Identity Mark/Logo in a manner that expresses or implies the Energy Commission's endorsement, approval, favoring, or sponsorship of the Contractor or its products, services, or websites. Except to identify itself as a contractor of the Energy Commission, the Contractor may not use the Identity Mark/Logo in a manner that implies the Energy Commission's affiliation with the Contractor or its products, services, or websites.

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- 2) The Contractor may not use the Identity Mark/Logo in a manner that suggests the Contractor's products, services, or websites are the Energy Commission's products, services, or websites.
- 3) The Contractor may not use the Identity Mark/Logo in a manner that damages, disparages, or diminishes the Energy Commission or its ARRA-funded programs or projects, including but not limited to uses that could be deemed obscene or that encourage unlawful activities.
- 4) The Contractor may not authorize any other party to use the Identity Mark/Logo.
- 5) The Contractor may not use the Identity Mark/Logo as a feature or design element of any other logo. The Contractor may not use the Identity Mark/Logo in any trademark, service mark, service name, or other indicia of origin.
- 6) The Contractor may not alter the Identity Mark/Logo in any manner, including proportions, colors, or elements, except as otherwise permitted by the Energy Commission.
- 7) The Contractor may not use the Identity Mark/Logo on any materials in which the Contractor's name, logo, or product name does not also appear.

E. Ownership of Identity Mark/Logo

- 1) As between the Energy Commission and the Contractor, the Energy Commission is the exclusive owner of the Identity Mark/Logo. The Energy Commission retains all rights and title to, and interest in, the Identity Mark/Logo. This Agreement does not transfer to the Contractor the Energy Commission's service marks, copyrights, or other intellectual property interests.
- 2) The Contractor may not register, adopt, or use any corporate name, trade name, trademark, domain name, service mark, certification mark, or other designation that violates the Energy Commission's rights in the Identity Mark/Logo.

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EXHIBIT E

Federal Provisions Incorporated By Reference, Special Provisions Governing Work Funded Under the American Recovery and Reinvestment Act of 2009, and General Federal Provisions

The Contractor must include in its agreements with subcontractors all of the provisions in this Exhibit E and Attachments 1 through 5, with the exception of Attachment 1. Exhibit D, Section 3.C contains additional provisions that the Contractor must include in subcontracts.

1. FEDERAL REGULATIONS/ GUIDELINES/ OMB CIRCULARS INCORPORATED BY REFERENCE

The Office of Management and Budget (OMB) Circulars, Federal regulations, and guidelines checked below are incorporated as part of this Agreement. OMB Circulars may be accessed on the OMB website at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal Regulations may be accessed at <http://ecfr.gpoaccess.gov>.

The Contractor must include in its subcontracts only the provisions below that apply to the particular organization concerned.

- ☒ Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations
- ☒ Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- ☒ Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- ☒ State Energy Program Funding Opportunity Announcement DE-FOA-0000052, CDFA Number 81.041 (<https://www.fedconnect.net/FedConnect/>)
- ☐ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☐ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☐ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☐ OMB Circular A-21: Cost Principles for Educational Institutions

ATTACHMENT 6

- ☐ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☐ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Other:
- ☐ None

2. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A. ARRA-FUNDED PROJECT

Funding for this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, and is dependent on a Federal agreement (DE-EE0000221) authorized by the State Energy Program, CFDA Number 81.041. The Contractor and all of its subcontractors are subject to audit by appropriate Federal and State of California (State) entities. The State has the right to cancel, terminate, or suspend this Agreement if the Contractor or any subcontractor fails to comply with the reporting and operational requirements contained in this Agreement.

B. SEGREGATION OF COSTS

The Contractor and its subcontractors must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.

C. PROHIBITION ON USE OF FUNDS

None of the funds provided under this Agreement derived from ARRA may be used by the Contractor or any of its subcontractors for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. ACCESS TO RECORDS

With respect to each contract or grant awarded utilizing at least some of the funds appropriated or otherwise made available by ARRA, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

ATTACHMENT 6

- 1) To examine any records of the Contractor, any of its subcontractors, or any State or local agency administering such contract that pertain to, and involve transactions related to, the contract, subcontract, grant, or subgrant; and
- 2) To interview any officer or employee of the Contractor, subcontractor, or agency regarding such transactions.

E. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS

The Contractor agrees that both it and its subcontractors shall comply with Section 1553 of ARRA, which prohibits all non-Federal employers, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

The requirements of Section 1553 of ARRA are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

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Agency Action: Not later than thirty (30) days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstatement the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

F. FALSE CLAIMS ACT

The Contractor shall promptly notify the State and refer to an appropriate Federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving ARRA funds.

G. INFORMATION IN SUPPORT OF ARRA REPORTING

The Contractor may be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. The Contractor shall provide copies of backup documentation at the request of DOE's Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

H. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

- 1) This award requires the Contractor to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.
- 2) The reports are due monthly by the third of the following month. For example, the January progress report is due on February 3. The reports must be submitted in accordance with the "Monthly Progress Reports" section of Exhibit A of this Agreement.
- 3) The Contractor must provide information including, but not limited to, the following:

Direct Jobs Created

The Contractor will be required to calculate direct jobs created and retained by all subcontractors other than material suppliers or central service providers ("indirect" jobs). The Contractor is not required to calculate jobs created by the re-spending of worker income within the local community ("induced" jobs). The Contractor should be able to substantiate subcontractor job hours reported by retaining payroll and project records for a minimum of three (3) years after the final payment has been received, unless a longer period of records retention is stipulated.

Vendor Data Elements (purchases \$25,000 or above)

- Dun and Bradstreet Data Universal Numbering System (DUNS) (<http://www.dnb.com>) or name.
- Zip code of Headquarters.
- Description of the product and/or service provided by the vendor.
- The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

I. ARRA TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

- 1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Contractor agrees to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at: <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.
- 2) If the Contractor is covered by the Single Audit Act Amendments of 1996 and

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OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Contractor agrees to separately identify the expenditures for Federal awards under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

- 3) The Contractor agrees to separately identify to each subcontractor, and document at the time of subcontract and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds. When the Contractor awards ARRA funds for an existing program, the information furnished to subcontractors shall distinguish the subcontracts of incremental ARRA funds from regular subcontracts under the existing program.
- 4) The Contractor agrees to require its subcontractors to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the Contractor SEFA described above. This information is needed to allow the Energy Commission and the Contractor to properly monitor subcontractor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

3. **ADDITIONAL FEDERAL PROVISIONS**

A. SITE VISITS

The Energy Commission, the Federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Contractor must provide and must require subcontractors to provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

B. NON-DISCRIMINATION CLAUSE

This award is subject to the provisions of 10 CFR 1040.1 *et seq.*, Nondiscrimination in Federally Assisted Programs.

ATTACHMENT 6

The Contractor will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit E, Attachment 1 of this Agreement) its commitment to comply with this law and return it to the Energy Commission Contracts Officer.

C. CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, and 2 CFR Part 901.

The Contractor will complete and certify by signature on the Form "Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters" (Exhibit E, Attachment 2 of this Agreement) its commitment to comply with these requirements and return it to the Energy Commission's Contracts Officer.

D. LOBBYING RESTRICTIONS

The Contractor agrees that none of the funds obligated under this Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

The Contractor will disclose lobbying activities by completing and signing the Standard Form LLL (Exhibit E, Attachment 3 of this Agreement) and return it to the Energy Commission's Contracts Officer.

E. NATIONAL POLICY ASSURANCES

The Contractor agrees to adhere to and include in all subcontracts the requirements set forth in the attached "National Policy Assurances" (Exhibit E, Attachment 4 of this Agreement).

F. FEDERAL INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- 1) The Federal intellectual property provisions applicable to this award are provided in Exhibit E, Attachment 5 to this award. A list of all intellectual property provisions may be found at:
http://www.gc.energy.gov/financial_assistance_awards.htm.
- 2) Questions regarding intellectual property matters should be referred to the DOE DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at:

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[http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

G. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

The Contractor must obtain any required permits and comply with all applicable Federal, state, and municipal laws, codes, and regulations for work performed under this Agreement.

I. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in Exhibits A through E must be referred to the Energy Commission's Contract Manager for guidance.

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EXHIBIT E ATTACHMENT 1

ASSURANCE OF COMPLIANCE

DOE F 1600.5
(06-94)
All Other Editions are
Obsolete

U.S. Department of Energy
Assurance of Compliance

OMB Control No.
1910-0400

Nondiscrimination in Federally Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

(Hereinafter called the "Applicant")

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during

ATTACHMENT 6

which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by

ATTACHMENT 6

the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

DOE F 1600.5

(06-94)

All Other Editions are Obsolete

OMB Control No.

1910-0400

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

	() -
Name and Title (Printed to Typed)	Telephone Number

Signature	Date

	() -
Applicant's Name	Telephone Number

Address:	Date

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Agency Use Only

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EXHIBIT E
ATTACHMENT 2STANDARD FORM LLL
DISCLOSURE OF LOBBYING ACTIVITIESApproved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application ____ b. initial award c. post-award	3. Report Type: a. initial filing ____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
7. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	

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Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

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8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

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EXHIBIT E ATTACHMENT 3

CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 2 CFR Part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 901 "Nonprocurement Debarment and Suspension." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADDITIONAL LOBBYING REPRESENTATION

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?
☐ Yes ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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4. SIGNATURE

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: _____

Printed Name and Title of
Authorized Representative: _____

SIGNATURE

DATE

ATTACHMENT 6

EXHIBIT E ATTACHMENT 4

NATIONAL POLICY ASSURANCES

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

Nondiscrimination Policies

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.
- b. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.
- c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.
- d. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041.
- e. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100.
- f. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

Environmental Policies

By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

- a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.
- b. Identify to the awarding agency any impact this award may have on:
 1. The quality of the human environment, including wetlands, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and assist the agency to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives

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until the agency provides written notification of compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

2. Flood-prone areas, and provide any help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 3. Use of land and water resources of coastal zones, and provide any help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.).
 4. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide any help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.
 5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
 6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).
- c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance).
- d. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

Live Organisms

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

- a. For human research subjects, the recipient must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
- b. For animals and plants:
 1. The recipient must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and

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NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

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provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

2. The recipient must follow the guidelines in the National Academy of Sciences (NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).
3. The recipient must immediately identify to the awarding agency any potential impact that the recipient finds this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). The recipient also must provide any help the awarding agency may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities the recipient has to comply with provisions of the Act that apply directly to it as a U.S. entity, independent of receiving this award.

Debarment and Suspension

The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

Drug-Free Workplace

The recipient agrees to comply with the requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Lobbying

- a. The recipient assures that it will comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.
- b. The recipient, if it is a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968), may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If the awarding agency determines that the recipient has engaged in lobbying activities, it will cease all payments to the recipient under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, the recipient assures that it is not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).
- c. The recipient must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other

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NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

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written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official.

Officials not to benefit

The recipient agrees to comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Hatch Act

The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

Native American Graves Protection and Repatriation Act of 1990

The recipient, if it is an organization which controls or possesses Native American remains and associated funerary objects, must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

Fly America Act

The recipient agrees that it will comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

Use of United States-flag vessels

- a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
- b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both the awarding agency's administrator (through the recipient in the case of its contractor's bill-of-lading) and to the Division of National Cargo,

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Office of Market Development, Maritime Administration, Washington, DC 20590.

Research Misconduct

The recipient assures that it will comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC)

- a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, the recipient agrees that it is not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983 as implemented by 32 CFR part 216, on:
 - 1. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
 - 2. Military recruiters' access to campuses, students on campuses, or information about students.
- b. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, the awarding agency:
 - 1. Will cease all payments to the recipient of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
 - 2. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

National Historic Preservation

- a. The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. The recipient agrees to identify to the awarding agency the potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

Relocation and Real Property Acquisition

The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

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Confidentiality of patient records

The recipient must keep confidential any records that it maintains of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

Constitution Day

The recipient must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity:

1. The recipient, its employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. The Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity –
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity:

The Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an

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individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

c. Provisions applicable to any recipient:

1. The recipient must inform the awarding agency immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. The awarding agency's right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to the awarding agency under this award.
3. The recipient must include the requirements of paragraph a.1 of this award term in any subaward it makes to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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EXHIBIT E ATTACHMENT 5

FEDERAL INTELLECTUAL PROPERTY PROVISIONS

Intellectual Property Provisions (NRD-1003) Nonresearch and Development

Grant #DE-EE0000221

Under federal grant #DE-EE0000221, the following intellectual property provisions apply to the rights of the Energy Commission and the U.S. Department of Energy (DOE).

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

10 CFR 600.136 Intangible property.

- (a) The Energy Commission may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.
- (c) DOE has the right to:
 - (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (d) (1) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the Energy Commission shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the Energy Commission, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).